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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

UNITED STATES OF AMERICA,

No. C 05-0334 SBA

Plaintiff,

ORDER

v.

[Docket Nos. 402, 403, 404]

LAL BHATIA, *et al.*,

Defendants.

Before the Court is defendant Lal Bhatia's Waiver of Defendant's Personal Appearance [Docket No. 402]; defendant Steven Shelton's Waiver of Personal Appearance and Request for Excused Appearance [Docket No. 403]; and defendant Bhatia's Motion to Vacate Trial Setting Conference and Notice of Filing Motion for Extension of Time to File Petition for Reconsideration in Ninth Circuit (the "Motion to Vacate") [Docket No. 404].

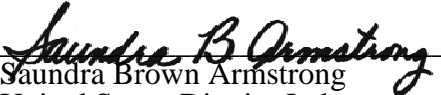
With regards to the two waivers, the two defendants, of which this matter has four, seek to waive appearing at their October 21, 2008 trial setting conference. The Court DENIES both waiver motions, as it is the Court's policy that defendants must be present for their trial setting conferences. The Court also notes counsel for defendant Bhatia e-filed his waiver on October 6, 2008, but never filed a chambers copy or e-filed a proposed order, without which the Court was unaware of the request. The Court further notes counsel for defendant Shelton filed a motion with a proposed order, and a chambers copy, but waited until October 16, 2008 to do so, then failed to e-file his documents as an actual motion.

With regards to the Motion to Vacate, counsel indicates he has filed with the Ninth Circuit a motion for an extension of time to file a petition for reconsideration of the denial of Bhatia's interlocutory appeal. Mot. at 1. Counsel then alleges by filing this motion that "it is our understanding that the appeal court cannot file a mandate back to this court so this court has no jurisdiction to set a trial date or to try this case until the mandate issues fom [sic] the appeal court." *Id.* As counsel provided no legal authority for his "understanding," the Court DENIES the Motion

1 to Vacate without prejudice. Counsel may raise this issue with proper legal authority at the trial
2 setting conference. Alternatively, counsel may seek a stipulation from all the parties regarding this
3 issue of jurisdiction, and file it with the Court.

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5 IT IS SO ORDERED.

6 October 17, 2008

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8 Sandra Brown Armstrong
9 United States District Judge
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